

Message Text

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TO SECSTATE WASHDC 8187

AMEMBASSY CANBERRA

INFO AMCONSUL MELBOURNE

AMCONSUL BRISBANE

AMCONSUL PERTH

UNCLAS SECTION 1 OF 2 SYDNEY 0421

E.O. 11652: N/A

TAGS: EINV, AS

SUBJ: NEW STATE GUIDELINES FOR FOREIGN MINING INVESTMENT

1. SUMMARY: ON FEBRUARY 21, THE LABOR GOVERNMENT OF NEW SOUTH WALES ISSUED ITS MINING INVESTMENT GUIDELINES WHICH LARGELY PARALLEL, BUT ARE NOT IDENTICAL TO, THE FEDERAL GOVERNMENT'S OWN RULES. THE GUIDELINES REQUIRE 51 PERCENT AUSTRALIAN EQUITY PARTICIPATION IN NEW MINING VENTURES BUT (1) ALLOW FOR FLEXIBILITY IN SPECIAL CASES; (2) APPLY ONLY TO NEW INVESTMENTS, OR TO CHANGES IN EXISTING INVESTMENTS; AND (3) PROVIDE FOR EXEMPTION FOR PORTFOLIO INVESTMENT IN CERTAIN CIRCUMSTANCES. AT THE SAME TIME, THE APPLICATION BY COAL AND ALLIED INDUSTRIES (CAIL) FOR MINING RIGHTS IN THE AREA OF WARKWORTH, N.S.W., WAS APPROVED ON TERMS WHICH ESSENTIALLY MEET CAIL'S WISHES, AND THE REQUIREMENT, IMPOSED LAST OCTOBER, THAT CAIL TAKE ON THE ELECTRICITY COMMISSION OF NEW SOUTH WALES AS A MAJOR PARTNER, HAS BEEN RESCINDED.

2. THESE TWO MOVES GO A LONG WAY TOWARD DISPELLING THE UN-
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CERTAINTIES GENERATED BY LAST OCTOBER'S DEVELOPMENTS, AND SHOULD BE TAKEN AS A REASSERTION OF THE NSW CABINET'S CONSENSUS THAT FOREIGN INVESTMENT IS WELCOME. UNFORTUNATELY, THE GUIDELINES, WHILE CONSISTENT WITH THE POLICIES OF THE COMMONWEALTH GOVERNMENT, EMPHASIZE TO THE OVERSEAS BUSINESSMAN THAT HE WILL HAVE AN ADDITIONAL BUREAUCRATIC HURDLE TO SURMOUNT AT THE STATE LEVEL IF HE WANTS TO INVEST IN MINING IN NEW SOUTH WALES. END SUMMARY.

3. ON OCTOBER 13, 1977, PAT HILLS, N.S.W. MINISTER FOR MINES AND ENERGY, ANNOUNCED THAT CAIL WOULD BE REQUIRED TO CEDE A MAJORITY INTEREST (51 PERCENT) IN THE WARKWORTH COAL DEPOSITS TO THE STATE-OWNED ELECTRICITY COMMISSION BEFORE A LICENSE TO BEGIN MINING COULD BE ISSUED. CAIL HAD ALREADY SPENT SOME FIVE MILLION AUSTRALIAN DOLLARS PROVING THE DEPOSIT, AND HAD COMMITTED AN ADDITIONAL SIX MILLION TO PREPARATIONS FOR MINING, (ONE AUSTRALIAN DOLLAR EQUALS US DOLLARS 1.15, APPROX.) AND THE MINISTER'S ANNOUNCEMENT WAS WIDELY REGARDED AS A BREACH OF THE TACIT UNDERSTANDING THAT SERIOUS PROSPECTORS WOULD HAVE THE MINING RIGHTS TO THEIR MINERAL DISCOVERIES. THE MINISTER'S DECISION WAS WIDELY CRITICIZED AS BEING CONTRARY TO THE GOA'S POLICY OF WELCOMING FOREIGN DEVELOPMENT CAPITAL AND NOT IN ACCORD WITH THE STATE'S OWN POLICY OF ENCOURAGING JOB-CREATING INVESTMENT. BECAUSE OF ITS RETROACTIVE NATURE, THE DECISION WAS REGARDED AS INCORPORATING ELEMENTS OF EXPROPRIATION.

4. THE BUSINESS COMMUNITY'S ATTITUDE TOWARD THE STATE'S ACTION WAS SUCCINCTLY EXPRESSED IN THE WEEKLY MAGAZINE, THE BULLETIN, BY FINANCIAL CORRESPONDENT "PIERPONT":
"BETWEEN THE LIBERAL AND LABOR PARTIES, AUSTRALIA HAS MANAGED TO ARRIVE AT A BIPARTISAN ATTITUDE OF ARBITRARINESS TOWARD FOREIGN MINING COMPANIES. THE FEDERAL GOVERNMENT, HAVING BOOTED DILLINGHAM AUSTRALIA, LTD. AND MURPHYORES HOLDING, LTD., OFF FRASER ISLAND, HAS PROCRASTINATED SHAMEFULLY IN PAYING THEM

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COMPENSATION, OR EVEN ACKNOWLEDGING THAT THEY WARRANT IT. THE NEW SOUTH WALES LABOR GOVERNMENT, NOT TO BE OUTDONE IN CAVALIER TREATMENT OF THE PRIVATE SECTOR, REVOKED COAL AND ALLIED INDUSTRIES LTD.'S MINING RIGHTS TO THE WARKWORTH COAL DEPOSIT WHEN IT APPEARED LIKELY THAT CONZINC RIOTINTO OF AUSTRALIA LTD. WAS ABOUT TO TAKE OVER CAIL.

THE WARKWORTH ACTION WAS TAKEN BY THE N.S.W. MINISTER FOR MINES AND ENERGY, PAT HILLS, APPARENTLY WITHOUT ANY PRIOR CONSULTATION WITH THE PREMIER, NEVILLE WRAN. ACCORDING TO THE STORIES PERPONT HEARS FLOATING AROUND THE CROESUS CLUB, WRAN WAS EMBARRASSED BY HILLS' ACTION AND HAS BEEN UNABLE TO PERSUADE HILLS TO BACK DOWN. AS WRAN HAS A NARROW PARLIAMENTARY MAJORITY AND HILLS HAS CONSIDERABLE POWER WITHIN THE PARTY, THERE HAS BEEN LITTLE PROGRESS TO RESOLVE THE WARKWORTH POSITION AND THE N.S.W. GOVERNMENT'S POLICY ON FOREIGN INVESTMENT IS CLOUDY.

IF PIERPONT WERE A FOREIGN MINING COMPANY HE WOULD NOT PUT A CENT INTO NEW SOUTH WALES UNTIL A CLEAR DECISION WAS TAKEN ON WARKWORTH AND FIRM GUIDELINES LAID DOWN FOR OVERSEAS INVESTMENT".

5. THE NEW GUIDELINES WERE ISSUED TWO DAYS AFTER THE ABOVE

ARTICLE WAS PUBLISHED. IT WAS WIDELY RUMORED LAST OCTOBER THAT THE DECISION ON CAIL HAD BEEN TAKEN UNILATERALLY BY MINISTER HILLS WITHOUT CONSULTATION WITH PREMIER WRAN. WHILE THAT VIEW IS PROBABLY AN OVERSTATEMENT, IT IS TRUE THAT THE PREMIER HAS BEEN VERY ACTIVE IN SEEKING NEW INVESTMENT IN THE STATE BOTH FROM FOREIGN AND DOMESTIC ENTERPRENEURS. IN ANY CASE, THE FULL CABINET STANDS BEHIND THE NEW DECREE, WHICH LICENSES CAIL TO MINE 406 MILLION TONS OF COAL FROM THE WARKWORTH DEPOSIT, ENOUGH, IN THE WORDS OF MINISTER HILLS, TO SATISFY THE COMPANY'S NEEDS FOR THE NEXT FIFTY YEARS.

6. WHILE CAIL'S IMMEDIATE PROBLEMS CAN NOW BE REGARDED AS HAVING BEEN SOLVED, THE NEW GUIDELINES DO REAFFIRM THE STATE GOVERNMENT'S RIGHT TO PASS ON INDIVIDUAL APPLICATIONS FOR MINING

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RIGHTS AND CONSTITUTE A GESTURE IN THE DIRECTION OF THOSE WHO ADVOCATE STRICT CONTROL OF FOREIGN PARTICIPATION IN MINERAL EXPLOITATION IN THE STATE. THE PREMIER HAS AGAIN DEMONSTRATED HIS CONTROL OVER POLICY WITHOUT UNDULY IRRITATING THE MORE RADICAL ELEMENTS OF HIS PARTY.

7. THE TEXT OF THE NEW GUIDELINES IS AS FOLLOWS: QUOTE

1.1 N.S.W. GOVERNMENT POLICY IS TO ENSURE A MINIMUM AUSTRALIAN EQUITY PARTICIPATION OF 51 PER CENT IN RESPECT OF MINING LEASES FOR NEW AND ADDITIONAL PRODUCTION AND TO PROMOTE AS HIGH LEVEL OF AUSTRALIAN PARTICIPATION AS PRACTICABLE.

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ACTION EA-12

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1.2 WHERE DIFFICULTY IS EXPERIENCED IN OBTAINING MAJORITY
AUSTRALIAN PARTICIPATION IMMEDIATELY, CONSIDERATION WILL BE GIVEN
TO APPLICATIONS WHERE THE MINERAL VENTURE IS OF EXCEPTIONAL VALUE
TO THE STATE OR SPECIAL TECHNOLOGY IS REQUIRED FOR ITS OPERATION
THAT IS UNOBTAINABLE WITH IMMEDIATE MAJORITY AUSTRALIAN
PARTICIPATION.

SUCH CONSIDERATION WILL DEPEND ON THE GRADUAL ACHIEVEMENT OF
MAJORITY AUSTRALIAN PARTICIPATION OVER A SPECIFIED PERIOD.

1.3 NO INCREASES IN AUSTRALIAN PARTICIPATION WILL BE NECESSARY
FOR EXISTING MINES OR AS A CONDITION FOR GRANTING MINING LEASES
TO ALLOW CONTINUATION OF THE LIFE OF ESTABLISHED MINING
OPERATIONS.

1.4 MAJORITY AUSTRALIAN PARTICIPATION IS NOT NECESSARILY
REQUIRED AT THE EXPLORATION STAGE SUBJECT TO THIS REQUIREMENT
BEING MET IN SUBSEQUENT MINING OPERATIONS.

2.1 WHERE ANY CHANGES WHICH AFFECT THE DEGREE OF AUSTRALIAN
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PARTICIPATION IN ANY TITLE TO EXPLORE OR MINE ARE PROPOSED BY
THE COMPANIES CONCERNED, THE DEPARTMENT OF MINES MUST BE
NOTIFIED OF SUCH CHANGES.

WHERE A SIGNIFICANT CHANGE IN OWNERSHIP OCCURS, THE N.S.W.
GOVERNMENT RESERVES THE RIGHT, AFTER DISCUSSION WITH THE MINING
COMPANIES CONCERNED, TO VARY THE PREVIOUSLY DETERMINED CONDITIONS
OF MINING LEASES WHICH WOULD BE AFFECTED BY THE CHANGE.

2.2 IN GENERAL, PROPOSALS FOR SIGNIFICANT REDUCTIONS IN
AUSTRALIAN PARTICIPATION NEED TO BE JUSTIFIED BY EVIDENCE OF
OFFSETTING ADVANTAGES FOR THE CONDUCT OF MINING OPERATIONS AND
FOR THE STATE WHICH WOULD NOT OCCUR OTHERWISE.

2.3 RECOGNIZING THAT CHANGES IN COMPANY SHAREHOLDINGS ARE OFTEN
OUTSIDE THE CONTROL OF BOARDS OF DIRECTORS, THE GOVERNMENT DOES
NOT REQUIRE NOTIFICATION OF INDIVIDUAL CHANGES IN FOREIGN
"PORTFOLIO" HOLDINGS. IT NOTES THE CURRENT GENERAL PRACTICE OF
THE FEDERAL GOVERNMENT IN RELATION TO "PORTFOLIO" HOLDINGS, AND
IN PRESENT CIRCUMSTANCES DOES NOT PROPOSE TO INTRODUCE
DISTINCTIVE REQUIREMENTS IN THIS REGARD.

IN THE EVENT OF PRONOUNCED GROWTH TENDENCIES IN FOREIGN "PORTFOLIO" HOLDINGS OR OTHER DEVELOPMENTS REQUIRING A RE-CONSIDERATION OF POLICY, THE GOVERNMENT WILL CONSULT WITH THE FEDERAL AUTHORITIES AND WITH REPRESENTATIVES OF N.S.W. MINING COMPANIES AS TO THE APPLICATION OF FEDERAL POLICY IN THIS AREA.

2.4 THE GOVERNMENT WILL REQUIRE MINING COMPANIES TO FURNISH IT WITH DETAILS OF THEIR CURRENT SHAREHOLDINGS ON AN ANNUAL BASIS AND MAY ALSO REQUEST THE INFORMATION AT OTHER TIMES.

ISSUE OF MINING LEASES
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NOTE: HOLDERS OF TITLES TO EXPLORE OR PROSPECT FOR MINERALS UNDER THE MINING ACT OR COAL UNDER THE COAL MINING ACT ARE REQUIRED BY CONDITION OF THOSE TITLES TO CARRY OUT MINIMAL WORK IN STATED PERIODS OF TIME. IN THE CASE OF TITLES UNDER THE MINING ACT, PROSPECTORS ARE REQUIRED TO RELINQUISH PROPORTIONS OF THE EXPLORATION AREAS AT SPECIFIED INTERVALS.

THE RELINQUISHMENT SYSTEM DOES NOT USUALLY APPLY TO COAL PROSPECTING AND EXPLORATION.

3.1 A SUCCESSFUL PROSPECTING OPERATION WITHIN A PROSPECTING AREA ESTABLISHES A PRIMA FACIE CASE FOR THE PROSPECTING COMPANY OR GROUP OF COMPANIES TO OBTAIN A MINING LEASE FOR THE WHOLE OR SUCH PORTION OF THE AREA AS WOULD PERMIT COMMERCIALLY VIABLE MINING OPERATIONS AND SUFFICIENT REWARD TO THE COMPANIES FOR THEIR RISKS AND INVESTMENT IN BOTH EXPLORATION AND MINING.

3.2 THE PROSPECTORS' PRIMA FACIE CASE IS SUBJECT TO COMPLIANCE WITH THE N.S.W. MINING LEGISLATION AND WITH THE PRESENT GUIDELINES. THE TECHNICAL AND FINANCIAL CAPACITY OF THE APPLICANT COMPANY OR COMPANIES MUST BE ADEQUATE FOR EFFECTIVE EXPLOITATION OF THE MINERAL DEPOSIT. MINING ACTIVITY IN THE AREA MAY BE SUBJECT TO POSSIBLE CONSTRAINTS ARISING FROM ENVIRONMENTAL ISSUES AND CLAIMS FOR COMPETING FORMS OF LAND USE. FOR THESE REASONS, SUCCESSFUL PROSPECTING IN AN AREA DOES NOT CARRY AUTOMATIC MINING RIGHTS OVER THAT AREA. THE GOVERNMENT'S DECISIONS WILL BE MADE AFTER CONSULTATION WITH THE TIMING COMPANIES CONCERNED.

3.3 IN CASES WHERE APPLICANTS FOR A COAL MINING LEASE ARE COMPANIES OTHER THAN THE ORIGINAL PROSPECTORS IN THE AREA CONCERNED, A LEASE MAY BE ISSUED AFTER THE GOVERNMENT HAS CALLED FOR COMPETITIVE TENDERS OR AFTER OTHER FORMS OF NEGOTIATION WHICH WOULD, IN THE OPINION OF THE GOVERNMENT, RESULT IN A NO LESS FAVORABLE RESULT FOR THE STATE THAN IF TENDERS WERE CALLED.

3.4 SUBJECT TO THE OVERALL BENEFITS WHICH WILL ACCRUE TO THE UNCLASSIFIED

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STATE, PREFERENCE IS GRANTING MINING LEASES WILL BE GIVEN TO
GROUPS HAVING HIGHER AUSTRALIAN PARTICIPATION. UNQUOTE.
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